IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

CHAMBER SUMMONS No. 1336 of 2005.

IN

SUIT No. 1849 of 2004.

Smita Sharad Shirsekar **..Plaintiff.**

V/s.

S.D. Damle & Ors. **..Defendants.**

Plaintiff present in person.

Ms. Manali Patwardhan i/b. M/s. Ajay
Misar & Co. for defendant no.2.

CORAM: S.C.DHARMADHIKARI,J.

DATED: 11th JULY, 2006.

P.C.:-

1] This Chamber Summons had appeared before this Court on number of occasions and I was informed by the party appearing in person that the Advocate appearing for the plaintiff has gone to his native place because there is some illness in the family. This application was made prior to the vacation and the matter was adjourned to June, 2006. The matter was adjourned again

to enable the plaintiff/party in person to engage another Advocate. Yesterday, when this matter was placed before me, one Advocate appeared and said that he has instructions from the plaintiff to appear for him, but on account of the Vakalatnama not being forwarded, he is unable to appear.

2] I had made it clear to the party as also the Advocate that the said Advocate can address the Court upon an undertaking to file Vakalatnama at a later stage. The matter was kept today because the said Advocate was not ready. It was treated as Part heard.

3] Today the matter is placed before me for Hearing and final disposal as a part heard matter. Yet, plaintiff requests for time to engage an Advocate. He states that the Advocate appearing yesterday has informed him that unless there is an order permitting him to appear, he cannot not appear and address the Court.

4] In the light of the events recorded above and the fact that the plaintiff had engaged an Advocate and he was granted liberty to appear, the application for adjournment stands rejected.

5] The plaintiff has applied to this Court for a direction to defendant no.2 to give inspection of documents as mentioned in the Schedule annexed to the Chamber Summons. The direction is sought against defendant no.2 who is party defendant. Defendant no.2 has filed a reply and has pointed out that this application is premature. Defendant no.2 has not filed any written statement in the suit. Therefore, this defendant cannot be called upon to furnish documents or copies of the documents enlisted in the Schedule annexed to the Chamber Summons.

6] There is no rejoinder affidavit filed. In my view, such an application is not maintainable, at this stage. The Advocate appearing on the earlier occasion, so also the

plaintiff has been unable to point out to me any provision, save and except, relying upon Order XI Rule 14 of the Civil Procedure Code. That deals with production of documents, at any time, during the pendency of the suit. The present application is not seeking this relief. If at all, it can be traced to Order XI Rule 15. The same reads thus;

> "R.15:- Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavit reference is made to any document,(or who has entered any document in any list annexed to his pleadings,) to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause of

> excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit".

7] A bare perusal of this provision would indicate that for it to apply there has to be a pleading which should refer to the documents enlisted in the Schedule. There is neither any pleading (Written Statement) nor affidavit on record in which the defendant no.2 has made any reference to these documents. Hence, there is substance in the plea raised by defendant no.2 that this application is premature.

8] In the light of the above, this application is dismissed as premature. The plaintiff would be at liberty to apply for the relief that has been claimed in this Chamber Summons after the second defendant files any affidavit or makes a reference to the documents at a later stage. Reserving this

liberty and keeping open contentions of parties in that behalf present Chamber Summons is dismissed as premature.

9] No order as to costs.

[S.C. DHARMADHIKARI,J]